

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:MCT:CIN:1: [REDACTED]  
LRAverbeck [REDACTED]

date:

to: John Dunn, Acting Team Manager  
LMSB:F&H:1184

from: Associate Area Counsel  
(Heavy Manufacturing, Construction and Transportation)

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subject: **Request for Assistance - Form 872**  
[REDACTED]

This memorandum is in response to your request for assistance dated June 27, 2001. This memorandum should not be cited as precedent.

ISSUES

1. What entity may execute a Form 872 Consent to Extend the Statute of Limitations for a corporation which, as a result of a merger with another corporation, no longer operates under the name or EIN listed on the tax return for the year at issue? What language should be used on the Form 872 for the name of the taxpayer?

2. Who may now sign the Form 872 for the taxpayer?

CONCLUSION

1. The surviving corporation may execute the Form 872 for the taxpayer. We suggest the following language be used when listing the taxpayer information on the Form 872: [REDACTED] ([REDACTED]), as successor in interest to [REDACTED] (EIN# ).

2. Any duly authorized officer of [REDACTED] may sign the Form 872 for the taxpayer.

FACTS

[REDACTED] was merged into [REDACTED] immediately after its acquisition by [REDACTED] on [REDACTED]. [REDACTED] no

longer operates under its former name or EIN #, and none of its officers are currently employed by [REDACTED]. [REDACTED] filed its last, separate corporate income tax return for the [REDACTED] period. The Statute of Limitations for this return year expires on [REDACTED]. The examination team now seeks to extend the statute of limitations for the [REDACTED] return year of [REDACTED].

#### ANALYSIS

Generally, the name of the taxpayer shown on the return can be used on the consent. Refer to I.R.M. 121.2.22.6.2. In this case, however, the exam team has informed us that the taxpayer was completely merged into [REDACTED] and no longer exists or operates under the name shown on the return. Since all of the subsidiaries of [REDACTED] were included in the merger, the following language should be used for the taxpayer's name on the consent form:

[REDACTED] ( [REDACTED]  
[REDACTED] ), as successor in interest to [REDACTED]  
[REDACTED] (EIN #).

Please ensure that the name of the corporation on the consent is the same as the name reflected on the corporate charter, including all articles and punctuation. Also please ensure that the merger agreement includes no limitations or exclusions on the successor's liability.

Internal Revenue Code § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. Under section 6501(c)(4), a taxpayer and the Service may consent in writing to an extension of the time for making an assessment. Section 6061 provides that any return, statement, or document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service generally applies the rules regarding the execution of the original returns to Forms 872. Section 6062 of the Internal Revenue Code provides that, generally, a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. See Rev. Rul. 83-41, 1983-1 C.B. 349. Therefore, since none of the

officers of [REDACTED] are employed with the successor corporation [REDACTED], any officer duly authorized to act for

[REDACTED] may sign the consent. The title of the signing officer should also be shown in the consent.

Please note that Section 6501(c)(4)(B) requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the Section 6501 requirement (such as with a Letter 907).

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although Section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

RICHARD E. TROGOLO  
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(Large and Mid-Size Business)

By: \_\_\_\_\_  
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